IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 915 OF 1989

WITH

CIVIL APPLICATION NO. 2239 OF 2003

Lalchand Manrupji Parmar ... Petitioner

versus

1. Panvel Industrial Co.op.
Estate Ltd.;
2. Khemchand Manrupji Parmar,
since deceased, through heirs
and legal representatives :
a) Radhabai Khemchand Parmar,
b) Surendra Khemchand Parmar,'
c) Prakash Khemchand Parmar,
d) Ashok Khemchand Parmar,
e) Jaywant Khemchand Parmar,
f) Pankuben Pratapchand Parmar,
g) Neeru Dhanpal Sanghavi,
h) Shyama Rajendra Gandhi. ... Respondents

...

Mr. N. V. Walawalkar, for Mr. G.H. Keluskar, for the Petitioner.

Mr. D.S. Sawant, for Respondent No.1.

Mr. A. Y. Sakhare, Senior Counsel, with Mr. V.B. Rajure, for Respondents Nos.2a to 2h.

...

CORAM : A.M.KHANWILKAR,J.

9th June 2004

ORAL JUDGMENT :

01. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Maharashtra State Co-operative Appellate Court, Bombay, dated January 27, 1989 in Appeal No. 52 of 1987. Briefly stated, the Petitioner, along with Respondent No.2, who happens to be his brother, were jointly allotted Plot No. 81 by the Respondent No.1 Society. The allotment was obviously subject to certain compliances to be done by the allottees, inter alia, that the allottees should commence their unit within a period of six months after the allotment of shed

is made. The joint allotment in favour of the Petitioner and Respondent No. 2 was made some time in 1974. However, since the said requirement was not complied with, Respondent No. 1 Society had sent intimation to the Petitioner on 30th December 1978 followed by letters dated 8th January 1979, 30th January 1979, 16th May 1979 and 30th July 1980. Eventually, the allotment came to be cancelled by the Board resolution dated 4th October 1980. It is relevant to note that the Petitioner, at the relevant time, was one of the Directors in the Management Board of the Respondent No. 1 Society. After the cancellation of the joint allotment, the Petitioner made application to the Respondent No. 1 Society for allotting another plot and in his individual capacity, which request was accepted and Respondent No.1, in turn, allotted Plot No. 46 some time in June 1991 to the Petitioner. In due course, Respondent No. 1 threatened cancellation of the said allotment, for which reason the Petitioner immediately rushed to the Co-operative Court by way of dispute, being Dispute No. 430 of 1981. In the said dispute, ad interim order was granted

in favour of the Petitioner, which was eventually confirmed by judgment and order dated 3rd February 1983. After that order, the matter was finally resolved between the Petitioner and Respondent No.1 Society. As per the said agreement, Plot No. 46 has been finally allotted to the Petitioner and the Petitioner is enjoying the said plot. Incidentally, Plot No. 46, which has been allotted to the Petitioner admeasures around 10,500 sq. ft., whereas the plot in question being Plot No. 81 admeasures only 8,450 sq.ft. Be that as it may, it appears that since the Respondent No. 1 Society subsequently re-allotted Plot No. 81 in favour of the original Respondent No. 2 some time in April 1984, the Petitioner, for reasons best known to him, decided to question not only the resolution cancelling the earlier allotment, but also resolution passed in favour of Respondent No. 2 re-allotting the same plot to Respondent No.2 by way of present dispute, which came to be instituted only in October 1986. The Judge of the Co-operative Court, Raigad Ratnagiri at Alibag, by judgment and order dated September 24, 1987, was pleased to allow the dispute as filed

by the Petitioner by passing the following order:

> "1. The Opponent No. 1 Society is directed to allot Plot No. 81 in joint name of Disputant and Opponent No. 2 subject to the payment of entire cost of construction of the shed jointly by disputant and Opponent No.2 and subject to the production of no objection certificate by the disputant from Industries Commissioner within three months from the date of issue of the order.
>
> 2. Parties to bear their own cost."

02. Against this decision, Respondent No. 1 Society carried the matter in appeal, being Appeal No. 52 of 1987, before the Maharashtra State Co-operative Appellate Court, Bombay. The Appellate Court, however, allowed the appeal preferred by Respondent No. 1 Society. The

Appellate Court reversed the finding reached by the First Court and, instead, took a view on reappreciation of evidence on record that the Petitioner was afforded ample opportunity of being heard before the cancellation of allotment in respect of the disputed plot, vide Board Resolution dated 4th October 1980. It has also found that, in fact, the Petitioner was the Director at the relevant time and was fully aware about the developments in that behalf. Accordingly, the appeal preferred by Respondent No. 1 Society came to be allowed. Against this decision, the present writ petition came to be filed by the Petitioner.

03. When this writ petition was pending, Civil Application was filed by the Petitioner pointing out that certain relevant documents were not placed on record either by the Respondent No. 1 Society or by the Petitioner during the trial of the dispute. This Court by order dated 27th August 2003 allowed the said application in the interest of justice by permitting the Petitioner to amend the pleadings. In view of the amended pleadings, it was thought necessary to refer the

matter to the Co-operative Appellate Court for further evidence and also for inviting findings on the following two issues :

> "(1) As to whether the bye law which is sought to be relied upon pursuant to the amendment was prevalent at the relevant time ? and
>
> (2) As to whether the action taken by the Respondent Society is in contravention of the bye law now sought to be relied upon ?"

04. The original bye-law which was produced is in Marathi. The substance of the requirement of bye-law D.2.3.10 was that, before the allotment is cancelled, the Board shall afford opportunity of at least 7 days to the allottee by giving notice, so as to enable the allottee to submit explanation, if any, and thereafter after considering the explanation so offered be satisfied that there was no substance in the

explanation as offered and that cancellation of allotment was imperative. The Appellate Court, in terms of the directions given in order dated 27th August 2003, allowed both the parties to adduce further evidence and after considering the said evidence has recorded finding on the aforesaid two issues in its judgment dated 7th October 2003, which has been forwarded to this Court for considering the same for final disposal of this writ petition.

05. The only question that is canvassed on behalf of the Petitioner to assail the resolution passed by Respondent No. 1 Society dated 4th October 1980 cancelling the original allotment in respect of the disputed plot is that the same is not in conformity with the requirement of the aforesaid bye-law. According to Mr. Walawalkar, for the Petitioner, the appellate authority neither in the first judgment nor in the present judgment has considered that there was failure of compliance of relevant bye-law. On the other hand, the appellate Court has erroneously proceeded on the reasoning that the Petitioner had knowledge about the proposed resolution to be

passed by the Managing Board of Respondent No.1 Society. It is submitted that mere knowledge is not sufficient and cannot take the colour of the notice as was required to be given by virtue of bye-law D.2.3.10. He, therefore, submits that the decision under challenge cannot be sustained and, instead, the resolution in question will have to be set aside and the consequential intimation to the Petitioner of cancellation of the allotment of the disputed plot will have also to be set aside and the allotment as was made earlier will have to be restored to the Petitioner.

06. Mr. Sawant, for the Respondent No. 1 Society, however, contends that no fault can be found with the view taken by the Appellate Court that there was substantial compliance of requirement of bye-law in question, more so when the Petitioner was himself Director of the Respondent No.1 Society at the relevant time and had attended the Board meeting on 21st July 1980, which clearly deals with the decision regarding cancellation of the allotment. Moreover, the Petitioner was given notice about the meeting to

be held on 4th October 1980, but cannot take advantage of having remained absent during the said meeting and the ultimate decision passed therein cannot be subject matter of challenge at his instance. Mr. Sawant further contended that the Board resolution was passed on 4th October 1980 and 17th April 1984, whereas the dispute was filed on 6th October 1986 and there was delay of two days, which the appellate Court on its own has proceeded to condone without a formal application on record. He submits that such a course is not permissible, in view of the decision of our High Court reported in 2003(3) Mh.L.J. 238 in the case of Ballumal A. Jaisingh v. M/s. J.J. Builders and others.

07. Mr. Sakhare for Respondent No. 2 has supported the decision of the appellate Court and further contends that the Petitioner does not deserve any indulgence in exercise of writ jurisdiction, having regard to his conduct. It is submitted that after the allotment was cancelled in October 1980, which was jointly in favour of the Petitioner and Respondent No.2, the Petitioner persued the matter with Respondent

No.1 Society and succeeded in getting Plot No. 46 allotted in his favour in his individual capacity and that allotment has become final. It is submitted that once the Petitioner has been allotted Plot No. 46, it is not open to the Petitioner to press for re-allotment of the present plot. In support of this submission, reliance is placed on communication issued by the Directorate of Industries, Sachivalaya, dated December 24, 1976, which provides that a small scale unit may not be allotted more than one plot/shed. It is submitted that the Petitioner was encouraged to file the present dispute only after the subject Plot No. 81 came to be re-allotted in favour of Respondent No. 2 as back as in April 1984, whereas the dispute came to be filed only in October 1986. In the meantime, however, Respondent No. 2 took several steps and changed his position to his detriment and even in that view of the matter, the Petitioner cannot be permitted to question the resolution dated 4th October 1980 cancelling the original allotment, as also the subsequent resolution re-allotting the same plot in favour of Respondent No.2.

07. Having considered the rival submissions, the core issue that needs to be addressed in the present petition is whether there has been compliance of bye-law No. D.2.3.10, referred to above. According to the Petitioner, no notice as was required by that bye-law was ever issued by the Respondent No. 1 Society. Moreover, the Board did not afford opportunity of submitting an explanation and there is no satisfaction recorded by the Board about the necessity of cancellation of allotment. To my mind, there is no substance in this grievance. The appellate Court in the first judgment as well as in the subsequent findings returned to this Court has rightly considered all the relevant documents on record to conclude that there was substantial compliance of the requirement under Bye-law No. D.2.3.10. Several letters exchanged between the parties have been adverted to. It will be appropriate to reproduce the said letters at this stage.

08. The first letter is dated 30th December 1978 addressed to the Petitioner by the Respondent No. 1 Society, which reads thus :

" PANVEL INDUSTRIAL CO-OPERATIVE ESTATE LTD.
Bombay-Poona Road
Panvel
Dist. KOLABA.

Ref.No.333/78-79 Date:30.12.1978

M/s L.M. Parmar
Plot No. 81,
Panvel. (Kolaba)

Sub : Shed No. 81
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Dear Sir,

We have to inform you that the Shed No. 81 has been completed long back and the same has been allotted to you. It is regretted to note that you have not yet started your unit. We may point out to you that as per provision of Bye-law No. D.2.3.10 the membership of a owner, member of a shed, if he does not commence his unit within a period of six months, after the allotment of shed to him, is ceased, and allotment of shed is withdrawn. As per provision of this Bye-law, we can take action to cancel your membership and to allot your shed to some other member. Before this, we once again request you to start your factory unit. As your factory is not started (on) functioning within a period of one month, we would be constrained to take legal action as pointed out above.

I hope you would be kind enough to do the needful in the matter.

Thanking you,

Yours faithfully,
Sd/-Manager."

The next letter dated 30th January 1979 is again addressed to the Petitioner by the Respondent No. 1 Society and it reads thus :

" PANVEL INDUSTRIAL CO-OPERATIVE ESTATE LTD.
Bombay-Pune Road,
Panvel.

Ref.No.403/78-79 Date: 30.1.1979.

M/s. L.N. & K.M. Parmar
PANVEL (Dist. Kulaba).

Sub: Possession of Shed No. 81
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Dear Sirs,

We are in the receipt of your letter dated 8.1.79 and we have to point out that the project scheme of your unit is to be approved by the Industries Commissioner and the Industries Commissioner has to issue the N.O.C. Your scheme which have been approved by the Industries Officer may kindly be got approved from the Industries Commissioner.

The possession of Shed No. 81 therefore cannot be given as you have not yet produced N.O.C.

Thanking you,

Yours faithfully,

M A N A G E R"

Another letter is dated 16th May 1979 addressed

to the Petitioner by the Respondent No. 1 Society, which reads thus :

" PANVEL INDUSTRIAL CO-OPERATIVE ESTATE LTD.

Bombay-Pune Road,
Panvel
Dist. Kolaba.

Ref.No. 632/78-79 Date:16th May 1979

To

1) M/s. L.M. Parmar
2) M/s. M.M.M.M. Bhaiji.

Sub: Shed No. 81/82

Dear Sir,

We have to request you to refer to the subject mentioned above and to state that Shed No.81/82 has been completed long back and we have requested you to take the possession of the same after producing the necessary N.O.C. You have not (done) the same so far.

I am, however, directed to inform you that, you should apply to the Industries Commissioner before 15th June 1979 for N.O.C. and a copy of the letter addressed to the Industries Commissioner be sent to us for information. If an application to obtain N.O.C. with a copy to this office is not made by you before 15thJune 1979, it will be presumed that, you are not interested in the said Plot.

We have also to inform you that, after the application is made, efforts should be made to obtain final confirmation of N.O.C. from the Industries Department before 30th September 1979, failing

which, the Shed allotted to you, shall be allotted to another applicant.

Thanking you,

Yours faithfully,
Sd/-
Manager. "

And the last letter addressed to the Petitioner by Respondent No.1 Society is dated 30th July 1980, which reads as under :

" PANVEL INDUSTRIAL CO-OPERATIVE ESTATE LTD.

Bombay-Poona Road,
Panvel,
Dist. Kolaba.

Intend by R.P.A.D.

Ref.No.58-80-81 Date : 30.7.1980

To

M/s. L.M. Parmar,
Panvel.

Sub: Working of the Unit.

Dear Sir,

With reference to the subject mentioned, we have to state that as per provision of Bye-laws (&) D.2.3.10, the industry which is not started within a period of six months from the date of allotment of plot/shed, the allotment of shed/plots is cancelled. The Board of Directors in the meeting held on 21-7-80, has passed a resolution to the effect that these units

> which have provisionally/finally allotted plot/shed and have not started their units as per provision of bye-laws, their allotment will be treated as cancelled.
>
> This is for your advance intimation. Individual cases are being considered on its merit by the Board.
>
> Thanking you,
>
> Yours faithfully,
> Sd/-
> Manager. "

Indeed, it was contended by Mr. Walawalkar that in none of these letters, the Petitioner was ever called upon to offer explanation. However, the fact remains that each of the letters mentions that steps for cancellation of allotment of the plot will be taken in the event the Petitioner failed to comply with the condition stipulated for allotment. It is not in dispute that the Petitioner did not comply with the condition till the resolution for cancellation of allotment was passed. What is relevant to note and has been rightly considered by the appellate Court is that the Petitioner was director of the Respondent No.1 Society. He attended the Board meeting convened on 21st July 1980. In the said meeting, Subject No. 4 was considered. The same reads thus :

> "Sub.No.4 - To consider the question of allotment of plots/sheds but not utilised. (Policy decision)
>
> Resol.No.4:- The office note in this regard pointed out that as per provision of bye-laws allotment of plots/sheds in such cases be cancelled and taken back. It was however resolved that,
>
> 1) in case of allotment of sheds/plots wherein possession is not given, the allotment should be cancelled and, ..."

In other words, the Petitioner is party to the resolution passed by the Board dated 21st July 1980. What is relevant to note is that this action is taken not only in respect of the subject plot, but several other plots in respect of which the condition of allotment was not fulfilled. It is thereafter the Board meeting was convened on 4th October 1980 to examine the position. Insofar as the Petitioner is concerned, since no reply was submitted by him, his case was considered in the category of seven other allottees as is reflected from the resolution dated 4th October 1980. Indeed, the Petitioner has not attended the Board meeting dated 4th October 1980, but it is too late in the

day for the Petitioner to make a grievance that he had no opportunity to offer explanation before the decision came to be taken by the Board on 4th October 1980 of which Board he himself was a member. To my mind, there is no infirmity either in the view taken by the appellate authority in this behalf, nor in its approach in reaching the finding, as has been recorded against the Petitioner.

09. Besides, there is also substance in the grievance made by Respondent No. 2 that the Petitioner cannot be permitted to take advantage of his own wrong. The Petitioner, in fact, after the cancellation of allotment in 1980 persued the matter with Respondent No. 1 Society for allotment of some other plot in his name. It is not in dispute that such plot has been allotted to the Petitioner, being Plot No. 46, which is admittedly more than the area of subject plot No. 81. Be that as it may, the allotment was made in favour of the Petitioner as back as in 1983 and the Petitioner perhaps had no difficulty till the disputed plot once again came to be allotted to Respondent No. 2 in April 1984. In any case,

the dispute came to be filed by the Petitioner only in October 1986 by which time the Respondent No. 2 had altered his position to his detriment by erecting plant and machinery and commencing his business activities. Taking overall view of the matter, there is no reason to interfere with the conclusion reached by the appellate Court that, in the facts and circumstances of the present case, there has been substantial compliance of the requirement of bye-law No. D.2.3.10 or, for that matter, affording fair opportunity to the Petitioner before the impugned resolution came to be passed. It is not necessary for me to dilate on other issues, which have been raised by Mr. Sawant regarding delay in filing the dispute or by Mr. Sakhare regarding the ineligibility of the Petitioner for being allotted more than one plot in terms of Government Policy noted in communication dated December 24, 1976.

10. Accordingly, this writ petition fails. The same is dismissed. Rule discharged, with costs. In view of the above order, Civil Application No. 2239 of 2003 disposed of.

11. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

jg.81